

United States District Court,
S.D. California.

CARL ZEISS VISION INTERNATIONAL GMBH and Carl Zeiss Vision Inc,
Plaintiffs.

v.

SIGNET ARMORLITE, INC,
Defendant.

And All Related Counterclaim,
And All Related Counterclaims.

No. 07cv0894 DMS (POR)

June 2, 2008.

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DANA M. SABRAW, District Judge.

This matter came before the Court for a claim construction hearing on April 21, 2008. Eric Weisblatt appeared and argued on behalf of Carl Zeiss Vision, Inc. and Carl Zeiss International GMBH ("Plaintiffs" or "Carl Zeiss"), and Richard Schnurr appeared and argued on behalf of Signet Armormlite, Inc. ("Defendant" or "Signet"). The Court heard a brief tutorial on the subject matter of the patent-in-suit from Defendant's expert, Professor Mo Jalie, after which counsel argued their proposed claim constructions. After a thorough review of the parties' claim construction briefs and all other material submitted in connection with the hearing, as well as a review of the Court's file, the Court issues the following order construing the disputed terms of the patent at issue in this case.

I.

BACKGROUND

United States Patent Number 6,089,713 ("the '713 Patent") is entitled, "Spectacle Lens with Spherical Front Side and Multifocal Back Side and Process for its Production." The '713 Patent issued on July 18, 2000. The named inventors are Albrecht Hof and Adalbert Hanssen, and the assignee is Carl-Zeiss-Stiftung.

On May 17, 2007, Plaintiffs filed the present Complaint against Defendant alleging infringement of the '713 Patent. There are three independent claims in the '713 Patent: claims 1, 6 and 8. Plaintiffs allege infringement of these independent claims, as well as dependent claims 5 and 7.

Defendant filed an Answer and Counterclaim on July 2, 2007, an Amended Answer and Counterclaim on July 31, 2007, and a Second Amended Answer and Counterclaim on November 29, 2007. The Counterclaim seeks a declaratory judgment of non-infringement, invalidity, and unenforceability of the '713 Patent, and also alleges claims for unfair competition, interference with contractual relationships, interference with prospective advantage and antitrust violations.

II.

DISCUSSION

Claim construction is an issue of law, *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996), and it begins "with the words of the claim." *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1142 (Fed.Cir.2005) (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996)). Generally, those words are "given their ordinary and customary meaning." *Id.* (citing *Vitronics*, 90 F.3d at 1582). This "is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Id.* (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed.Cir.2005)). "The person of ordinary skill in the art views the claim term in the light of the entire intrinsic record." *Id.* Accordingly, the Court must read the claims "in view of the specification, of which they are a part." *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed.Cir.1995)). In addition, "the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." *Id.* (quoting *Phillips*, 415 F.3d at 1318).

A. Claim 1

Claim 1 of the '713 Patent recites:

A spectacle lens, comprising:

a spherical or rotationally symmetrical aspheric front surface, and

a back surface that serves as a prescription surface and is individually optimized in order to fulfill all individual requirements of a prescription for spectacles excluding 0 diopters and distribution of said requirements over said prescription surface, said back surface comprising a multifocal surface without point symmetry or axial symmetry.

The parties agree on the construction of certain terms and phrases in claim 1, and to that extent, the Court adopts those constructions as its own. The disputed terms and phrases are addressed below.

1. "*Prescription surface*"

The first point of divergence is with the term "prescription surface." Plaintiffs do not offer a proposed construction of this term, but Defendant argues this term should be construed as "[t]he back surface of the lens that is shaped so that the lens fulfills all requirements of the prescription of the individual wearer,

including spherical, astigmatic and prismatic power and their distribution in x and y coordinates over the lens."

To support this proposed construction, Defendant relies on certain portions of the specification. (*See* '713 Patent, col. 2 at lines 55-59, col. 3 at lines 17-21.) However, neither of these selected portions supports Defendant's proposed construction. Accordingly, the Court declines to adopt it. Instead, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "prescription surface" according to its plain and ordinary meaning. FN1

FN1. This construction applies equally to the same term in claim 8.

2. "*Individually optimized*"

The next disputed phrase is "individually optimized." Plaintiffs argue this phrase should be construed to mean "the back surface is custom designed using a calculation which employs prescription requirements of the individual, the spherical shaped side, and a starting design and which produces an optimized design fulfilling the individual prescription requirements on the lens back surface." Defendant asserts this phrase, and the larger phrase of which it is part, should be construed to mean:

[t]he back surface is shaped as the result of a best fit solution to all requirements for the individual wearer, including the prescribed spherical, astigmatic or prismatic power and their distribution over the lens, by modifying a predefined starting surface using a series of mathematical calculations and optical evaluations at a number of points on the surface, the mathematical calculations comprising target functions and weighting functions of spherical, astigmatic or prismatic power; but not including the case where the prescribed spherical, astigmatic or prismatic power is zero.

Plaintiffs do not point to any intrinsic evidence to support their proposed construction. Rather, they appear to rely on the plain and ordinary of meaning of "optimized" to one of ordinary skill in the art. They assert that one of ordinary skill in the art would construe "optimized" to mean "a mathematical calculation which begins with a starting design and modifies the starting design to better satisfy target functions or target data."

Defendant, on the other hand, does not offer a proposed construction of the isolated phrase "individually optimized." Rather, it asks the Court to essentially rewrite the claim, which is beyond the scope of this Court's power. *See* K-2 Corp. v. Salomon S.A., 191 F.3d 1356, 1364-65 (Fed.Cir.1999) (stating courts do not rewrite claims).

Nevertheless, Defendant states its proposed construction is supported by the intrinsic evidence. (*See* '713 Patent, col. 3, lines 35-47, col. 4, lines 6-13, 53-58, col. 5, lines 21-30, 40-43, col. 6, line 65-col. 8, line 8.) These portions of the specification describe where the individual optimization should occur ("on the surface of the spectacle lens facing the wearer's eye"), and how it may occur ("at a finite number of points that lie close enough for the design to be correct also between the points" or "at the measurement points"). They also provide examples of requirements for "special optimization," such as "cornea-vertex distance" and "forward inclination of frame," and an example of a calculation for a spectacle lens according to the invention. However, none of this evidence supports the numerous limitations Defendant seeks to add to the claim.

The same may be said for the portion of the prosecution history cited by Defendant. Indeed, Defendant cites that evidence for the position that the asserted claims should be construed narrowly, not as support for its proposed construction of "individually optimized ."

The only other evidence Defendant cites to support its proposed construction is extrinsic evidence. However, in this case the Court finds that a person of ordinary skill in the art would be able to discern the meaning of "individually optimized" solely by reference to the intrinsic evidence. Accordingly, it would be "improper to rely on extrinsic evidence" in this case. *See Vitronics*, 90 F.3d at 1583 (stating that where "an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term ... is it improper to rely on extrinsic evidence.")

Relying on the intrinsic evidence, this Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "individually optimized" to mean "custom designed using one or more mathematical calculations and optical evaluations." FN2

FN2. This construction applies equally to the same phrase in claim 8, and the similar phrase, "individual optimization," in claim 7.

3. "*Diopters* "

The next disputed term is "diopters." Plaintiffs argue this term has a plain and ordinary meaning to one of ordinary skill in the art, and that meaning is "a unit for specifying the power of a spectacle lens. It is the reciprocal of the focal length in meters." Defendant asserts "diopters" means "[a] unit of measurement of the refractive power of a lens (spherical and astigmatic power), or of the deviation of light by a lens (prismatic power)."

After reviewing the parties' briefs and hearing the tutorial and arguments of counsel, this Court agrees with Plaintiffs that "diopters" should be construed according to its plain and ordinary meaning. Indeed, that meaning is evident from the presentation of Defendant's expert. (*See Claim Construction Hearing, Ex. V.*) Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "diopters" according to its plain and ordinary meaning, as set out above by Plaintiffs.FN3

FN3. For these reasons, the Court also finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "dioptric power" in claim 6 according to its plain and ordinary meaning.

As a corollary to the term "diopters," the parties also dispute the broader phrase "excluding 0 diopters." Plaintiffs argue this phrase means there is no prescriptive requirement for sphere, astigmatism *and* prism, *i.e.*, there is no individual prescription, whereas Defendant asserts it means there is no prescriptive requirement for sphere, astigmatism *or* prism, *i.e.*, only one prescriptive requirement must be zero.

Here, again, the Court agrees with Plaintiffs. The claim states "excluding 0 diopters." It does not state "excluding 0 diopters for sphere, astigmatism or prism." Thus, based on the language of the claim, the Court

finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "excluding 0 diopters" in accordance with Plaintiffs' proposed construction.FN4

FN4. The findings concerning "diopters" and "excluding 0 diopters" also apply equally to claim 8.

4. "Astigmatic "

The next disputed term is "astigmatic." Plaintiffs argue this term should be construed according to its plain and ordinary meaning. Defendant asserts it should be construed as "[t]he unequal refraction of light in different meridians by a lens, in which the image of a point object is focused as two line images at different distances from the lens."

As above, the Court agrees with Plaintiffs that "astigmatic" would have a plain and ordinary meaning to one of skill in the art. Contrary to Defendant's approach, there is no need to resort to extrinsic evidence to define the term. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "astigmatic" according to its plain and ordinary meaning.FN5

FN5. This construction applies equally to the same term in claim 8, and the similar term, "astigmatism," in claim 7.

5. "*Distribution of said requirements over said prescription surface* "

The next disputed phrase in claim 1 of the '713 Patent is "distribution of said requirements over said prescription surface." Here, again, Plaintiffs argue the phrase should be construed according to its plain and ordinary meaning, whereas Defendant asserts it should be construed to mean: "[t]he distribution of all requirements of the individual wearer's prescription, including spherical, astigmatic or prismatic power, at a number of points over the back surface in addition to the near and far reference points."

As with the term, "individually optimized," Defendant's proposal looks more like a wholesale revision of the phrase rather than a proposed construction. Furthermore, the intrinsic evidence cited by Defendant is exemplary only, and does not support the proposed limitations. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "distribution of said requirements over said prescription surface" according to its plain and ordinary meaning.FN6

FN6. This construction applies equally to the same phrase in claim 8.

B. Claim 5

The next claim at issue in this case is claim 5. Claim 5 is dependent on claim 1, and recites: "A spectacle lens according to claim 1, wherein an individual distance of a wearer's pupils from each other is taken into account in an optimization calculation." The parties agree on the construction of the term, "spectacle lens," and it appears they agree that the phrase "individual distance of a wearer's pupils from each other" is referred to in the art as "pupillary distance," or "PD." In light of these agreements, the Court adopts these

constructions as its own.

The disagreement about claim 5 concerns the term "optimization calculation." Plaintiffs argue this term should be construed according to its plain and ordinary meaning, whereas Defendant asserts it should be construed in accordance with the term "individually optimized."

For the reasons set out above with respect to the term "individually optimized," the Court rejects Defendant's proposed construction of "optimization calculation." Instead, the Court agrees with Plaintiffs, and finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "optimization calculation" according to its plain and ordinary meaning.

C. Claim 6

The next claim at issue is claim 6. This claim recites:

A process for producing spectacle lenses with multifocal power, comprising:

employing semi-finished lenses having spherical or rotationally symmetrical aspheric front surface with a few different radii, and

matching all individually required dioptric power, excluding 0 diopters, at a back surface of said spectacle lens said back surface comprising a multifocal surface without point symmetry and/or axial symmetry.

The parties agree on the construction of certain terms and phrases in Claim 6, and to that extent, the Court adopts those constructions as its own. The disputed terms and phrases are addressed below.

1. "*Semi-finished lenses*"

The parties offer competing definitions of this term. Plaintiffs argue it should be construed to mean "lens blanks in which one face is a finished surface and the other face is unfinished." Defendant asserts it means "[a]n ophthalmic lens of which only one surface is completely polished and the other surface can be shaped to any required curvature to achieve a given power requirement for a completed ophthalmic lens."

To support these proposed constructions, the parties rely on different technical dictionaries. However, for the reasons set out above, the Court finds it unnecessary to resort to extrinsic evidence. Furthermore, the cited portions of the specification do not support Defendant's proposed construction. Rather than adopting either of the parties' proposed constructions, this Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "semi-finished lenses" according to its plain and ordinary meaning.

2. "*A few different radii*"

The parties propose different meanings for this phrase. Plaintiffs argue it has a plain meaning to one of ordinary skill in the art, and it must be read in the context of the prior art. Defendant asserts it means "[a]bout 10 or fewer different radii."

Based on the proposed constructions, it appears the parties agree that "a few different radii" means about ten radii. This construction is supported by the intrinsic evidence. (*See* '713 Patent, Abstract, col. 3, line 61-col.

4, line 5, col. 6, line 34-37) (referring to "about 10 different radii" and "e.g. 10" radii). The intrinsic evidence does not support Defendant's proposal that ten is the upper limit of "a few different radii." Indeed, Defendant admits that "[t]he '713 Patent fails to teach or suggest an upper limit of the required number of different radii[.]" (Signet's Opening Claim Construction Br. at 25.) Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "a few different radii" to mean "about ten different radii ."

3. "Matching "

The next disputed term in claim 6 is "matching." Plaintiffs argue this term should be construed as "adjusting of a starting design to the individual prescription." Defendant asserts its should be construed to mean the same thing as "individually optimized."

The Court rejected Defendant's proposed construction of "individually optimized" for the reasons set out above. Those reasons provide ample support for the Court's rejection of Defendant's proposed construction of "matching."

Two other reasons also support that conclusion. First, as Plaintiffs point out, claim 1 uses the term "individually optimized," whereas claim 6 uses the term "matching." As stated by the Federal Circuit: "There is presumed to be a difference in meaning and scope when different words or phrases are used in separate claims." *Tandon Corp. v. United States Int'l Trade Comm'n*, 831 F.2d 1017, 1023 (Fed.Cir.1987). Second, claim 7, which depends from claim 6, uses the phrase "individual optimization." Pursuant to the doctrine of claim differentiation, the Court is prohibited from importing this limitation into claim 6. *Innova/Pure Water v. Safari Water Filtration*, 381 F.3d 1111, 1123 (Fed.Cir.2004). Accordingly, the Court rejects Defendant's proposed construction of "matching."

Instead, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "matching" according to its plain and ordinary meaning.

D. Claim 7

The next claim at issue is claim 7. This claim recites:

The process for producing spectacle lenses according to claim 6, further comprising carrying out at least one individual optimization for a wearer of the spectacle lens on said back surface so that sphere, astigmatism, and prism dioptric prescription values are established at all points on said back surface facing a wearer's eye.

The only phrase in claim 7 that remains in dispute is "established at all points on said back surface facing a wearer's eye." Plaintiffs argue this phrase means "[o]ptimized at a finite number of points that lie close enough for the design to be correct between the points[.]" whereas Defendant asserts it means: "At each point on the back surface, calculated using solutions of error integrals and methods of calculus of variation."

There is no dispute the specification describes the two methods of optimization embodied in the parties' competing instructions: One provides for optimization at a finite number of points while the other provides for optimization at all points. (*See* '713 Patent, col. 3, lines 35-53.) Plaintiffs assert claim 3 provides for optimization at all points because it states the lens is "optimized ... at all points[.]" whereas claim 7 provides for optimization at a finite number of points because it states the prescription values are "established at all

points[.]" However, the use of "optimized" or "established" does not change the method, which describes that the process occurs "at all points." That claim 3 uses "optimized" and claim 7 uses "established" reflects the different inventions described in those claims, namely, the lens in claim 3 and the process of creating the lens in claim 7. Contrary to Plaintiffs' argument, claims 3 and 7 describe the same method of optimization, not different methods. Accordingly, the Court rejects Plaintiffs' proposed construction of this phrase. Instead, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "established at all points on said back surface facing a wearer's eye" in accordance with Defendant's proposed construction.

III.

CONCLUSION

For the reasons stated above, the disputed terms are interpreted as set forth in this Order.

IT IS SO ORDERED.

S.D.Cal.,2008.

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